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IN THE

Supreme Court of the United States

OCTOBER TERM, 1949.

NO. 662.

REPUBLIC STEEL CORPORATION, Petitioner,

v.

THE FARVAL CORPORATION, Respondent.

REPLY BRIEF FOR PETITIONER.

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1949.

NO. 669.

REPUBLIC STEEL CORPORATION, Petitioner,

v.

THE FARVAL CORPORATION, Respondent.

REPLY BRIEF FOR PETITIONER.

I.

Contrary to the suggestion of respondent (Respondent's Br., p. 3), the petition does not seek a review on questions of fact; petitioner's contention is that the courts below applied erroneous rules of law to the facts —rules of such far-reaching implication that they transcend the immediate issues of this case and adversely affect the public interest (Petitioner's Br., pp. 13-15, 17). It seems obvious that:

> The question whether an "inoperative" prior patent may be disregarded where the claims of the later patent against which it is invoked do not de-

fine the differences that make the later patent operative (Petition, p. 7) is not one of fact but of law;

The question whether a Patent Office decision is *per se* evidence, which casts upon the public the burden of proving it wrong (Petition, p. 7), is not one of fact but of law*; and

The questions as to the effect of a Patent Office decision upon the scope and effect of the *Milburn-Davis* doctrine, 270 U.S. 390 (1926) (Petition, pp. 7-8) are not ones of fact but of law.

It seems clear, therefore, that the "concurrent findings" doctrine relied on by respondent (Respondent's Br., pp. 3-5) is not apposite to the question of granting or denying the writ in the case at bar; *cf. Alexander Milburn Company v. Davis-Bournonville Company, supra,* at p. 399; *Lincoln Engineering Co. v. Stewart-Warner Corp.,* 303 U.S. 545, 546 (1938); *Exhibit Supply Co. v. Ace Patents Corporation,* 315 U.S. 126, 128 (1942); *Halliburton Oil Well Cementing Co. v. Walker et al,* 329 U.S. 1, 2-3 (1946).

II.

While respondent makes the naked assertion (Respondent's Br., p. 3) that the decisions cited by petitioner to show conflicts between the circuits were based on "entirely different" factual situations, it is significant that respondent does not challenge petitioner's statement of the conflicting cases (Petitioner's Br., pp. 12-16).

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* The Master recognized that the issue is one of law (see his Conclusion 3, R. 368; *but cf.* Respondent's Br., p. 3, fourth paragraph).

That statement establishes that the decision at bar conflicts with decisions in this Court and in the Second, Fourth and Seventh circuits on important questions of federal law.

Respectfully submitted,

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April, 1950.